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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 341

UNITED FUNDS, INC., A CORPORATION, PETITIONER

v.

DAN M. NEE, UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the District Court (R. 13–16) is reported at 72 F. Supp. 134. The opinion of the Court of Appeals (R. 130–143) is reported at 169 F. 2d 33.

JURISDICTION

The judgment of the Court of Appeals (R. 143–144) was entered on July 27, 1948. A petition for rehearing (R. 145–147) was denied on August 18, 1948 (R. 155). The petition for a writ of certiorari was filed on October 6, 1948.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether, under the applicable stamp tax provisions of the Internal Revenue Code, there was a taxable transfer from the taxpayer to the Commerce Trust Company of the right to receive certain shares of stock.

2. Whether, in any event, the stamp taxes were correctly imposed here because of the transfer of the shares in question to the nominee of Commerce, in the absence of the necessary exemption certificate.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the statute and Regulations involved are set forth in the Appendix, *infra,* pp. 15–22.

STATEMENT

The material facts in this case, which was tried before the District Court without a jury (R. 1), are as follows:[1]

[1] A more complete statement of the material facts than is made in the petition (pp. 2–4) is believed necessary. The facts in the case were, as pointed out by the court below (R. 131), undisputed: They were developed by pleadings (R. 3–8, 11–12), statements of counsel for the respective parties (R. 20–34), and certain testimony and exhibits (R. 34–127). While the separate findings of fact made by the trial court (R. 17–18) and the factual statements contained in its memorandum opinion (R. 13–16) were incomplete, a fairly complete recital of the facts is contained in the opinion of the court below (R. 131–135).

The taxpayer was incorporated October 8, 1940, as a management open-end investment trust of the diversified type, with its principal place of business at Kansas City, Missouri. (R. 3, 11, 13, 20–21.) By its articles of incorporation (R. 35–36) the taxpayer was authorized to "subscribe for, purchase, invest in, or otherwise acquire, own, hold, sell, negotiate, possess, exchange, transfer or otherwise dispose of and deal in and with shares of capital stock", bonds and other securities of any kind—"to the same extent as natural persons might or could do" (R. 4). The articles authorized the taxpayer to enter into contracts "for the purpose of depositing its cash, securities and other property in trust" (R. 5) with banks or trust companies having certain minimum capital, and provided further that all "cash and securities owned by the corporation from time to time shall be placed in trust" under the terms of an agreement approved by the directors and shareholders with one or more banks or trust companies having certain minimum capital (R. 5, 132).

On October 14, 1940, an agreement (R. 62–87) was entered into between the taxpayer and Commerce Trust Company (in which the taxpayer is designated as the "Corporation" and Commerce as the "Trustee" (R. 62)), which provided for the deposit by the taxpayer of certain cash and certificates of its own shares of capital stock and dealt with the matter of sale of those shares

(R. 63–66). The agreement contained the following provision (R. 71–72):

> SECTION 2.10. At any time, and from time to time, the Corporation may direct the Trustee to use any cash then held by the Trustee with respect to the shares of stock of the Corporation of any class, for the purchase of any securities of the corporation and/or securities included on the approved list with respect to such class, within the limitations herein provided. Whenever the Corporation shall hereafter purchase or direct the Trustee to purchase any securities the Corporation shall furnish to the Trustee an Officers' Certificate specifying (a) the securities so purchased or to be purchased, (b) the class of stock of the Corporation, the assets appertaining to which are to be used to pay for the same, (c) the amount to be paid therefor, (d) the person or persons to whom such amount is to be paid, and (e) that the securities are those of corporations and/or securities then included on the approved lists with respect to the class of Capital Stock for which it is being purchased, and the purchase thereof is in accord with the limitations set forth in the Articles of Incorporation or any amendment thereto. Upon receipt of such Officers' Certificate, the Trustee shall pay the amount set forth in such Officers' Certificate to be paid for the securities so purchased or to be purchased, certified as aforesaid, to the person

> or persons specified in the aforesaid Officers' Certificate against delivery to the Trustee of such securities (in such form as at the time constitutes good delivery under the rules or practices of the New York Stock Exchange) and shall charge the amount of such payment against the Deposited Property appertaining to the class of Capital Stock of the Corporation so specified.

As described by taxpayer's counsel in his opening statement (R. 21–23) and by taxpayer's two witnesses (R. 119–120, 122–124), and as illustrated by "sample copies" of forms used during the period in question (Ex. 6, R. 109; Ex. 7, R. 110; Ex. 8, R. 111; Ex. 11, R. 117), the method followed by the taxpayer in the purchase of securities was as follows:

The taxpayer had a contract with United Funds Research Corporation, under which the latter advises as to all investments made with the taxpayer's funds; the officers of Research, when they have decided on the purchase of certain securities, place an order, with one of the brokers with whom the taxpayer dealt, and later deliver to the taxpayer a form giving notice of the purchase of the particular securities; the taxpayer then "executes an Officers' Certificate which is addressed to the Commerce Trust Company as Trustee, advising the Trust Company, and directing the Commerce Trust Company, to pay

for certain securities through the designated broker, at a designated price, against delivery of the security". (R. 22.) When the securities are delivered they are paid for by Commerce with funds of the taxpayer in its custody. (R. 22–23.) All orders for the purchase of securities are placed in the name of the taxpayer. (R. 30.) (See also R. 133–134.)

All of the securities purchased by the taxpayer during the period in question were transferred from the sellers direct to Margaret Gaffney, the registered nominee of Commerce; at the time of each purchase documentary stamps were affixed to the securities by the respective sellers, and the tax involved in this action was in addition thereto. (R. 6–7, 12.) As testified, at the inception of the taxpayer's activities in 1940, Commerce had selected and registered its nominee with the Collector of Internal Revenue and notified the brokers that securities purchased for the taxpayer should be issued in the name of such nominee. (R. 122–123.)[2]

After examination and report by a revenue agent, an assessment was made against the taxpayer of documentary stamp taxes for the period

[2] Plaintiff's Exhibit 10 (R. 124) is a "typical form of instruction" (R. 123) given to all brokers—to the effect that all securities purchased by the taxpayer are issuable in the name of the nominee.

from November 12, 1940, to June 5, 1944, in the amount of $5,849.95, which was subsequently paid (R. 3–4, 11), and after filing a claim for refund (R. 95–103), the taxpayer brought the present action for its recovery (R. 3–8).[3] In the agent's report, the proposed assessment was predicated upon the theory that the taxpayer had purchased securities in its name and thereby acquired the right to receive them, and that by directing that the securities be delivered to Commerce the taxpayer thereby transferred its right to receive the securities, and those transfers were subject to tax under Section 1802 (b) of the Internal Revenue Code. (See R. 17.)[4]

The District Court concluded that (1) the taxpayer had no right to receive the securities upon the transfer of which the tax was imposed, and (2) that the transfers in question were within the exemption provided for by Section 1802 (b) of

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[3] Since not brought until more than six months after the filing of the claim (R. 1, 7–8), the action could be instituted even though the claim had not been acted upon. See Section 3772 of the Internal Revenue Code.

[4] A copy of the agent's report appears in the record as Exhibit 3–b. (R. 91–93.) Attached to the report there was a schedule of the securities purchased during the period in question, showing the various lots purchased and the taxes due on each, and the total tax due, but the schedule was omitted from the printed record on appeal (R. 93) since there was no controversy as to *the amount* of the tax, if it was properly imposed.

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the Internal Revenue Code (R. 17–18),[5] and accordingly entered a judgement in favor of the taxpayer (R. 18). On appeal, the court below held that neither of the two above stated conclusions of the trial court could be sustained on the facts (R. 135–143), and accordingly reversed the judgment of the District Court with directions to dismiss the complaint (R. 143–144).

ARGUMENT

1. Upon the undisputed facts of this case, the court below correctly held that the taxpayer transferred to Commerce or its nominee the right to receive the securities purchased by the taxpayer, and that the transfers of the "rights to receive" the shares in question were subject to tax under the provisions of Section 1802 (b) of the Internal Revenue Code (Appendix, *infra*). (R. 135–139.) The taxability of transfers of rights to receive shares of stock was conclusively settled by the decisions of this Court in *Raybestos-Manhattan Co.* v. *United States,* 296 U. S. 60, and *Founders General Co.* v. *Hoey,* 300 U. S. 268. The court below correctly applied the principles

[5] While included in the trial court's so-called "Findings of Fact" (R. 17), these were really conclusions, clearly reviewable on appeal. The trial court also made a "finding of fact" that Commerce was a mere custodian (R. 17)—who within the terms of Section 1802 (b) of the Code held for and subject to the instructions of the owner—but that conclusion was not attacked by the Collector in the appeal to the court below (R. 140).

enunciated in those cases, and there is no occasion for any further review.

2. The petition rests on the erroneous assumption that Commerce, the custodian, was the purchaser of the securities in question. (Pet. 4, 5.) The method followed by the taxpayer in the purchase of the securities, as hereinabove described (see R. 21–22, 119–120, 122–123; see also R. 109, 110, 111, 117), demonstrates beyond doubt that the taxpayer was in fact the purchaser and consequently had the "right to receive" the securities. All orders for securities were initiated by Research, the taxpayer's investment advisor, for and in behalf of the taxpayer, in the name of the taxpayer (R. 134), and as conceded by taxpayer's counsel in the trial court (R. 30), were "the same" as orders given by the taxpayer itself. The taxpayer's orders for the securities, carrying with them the implied agreement or obligation to pay for them, gave rise, by operation of law, to a right in the taxpayer to receive the shares. *Raybestos-Manhattan Co.* v. *United States, supra,* p. 64. The court below recognized that the taxpayer was the purchaser, and had the right to receive the shares, and in so doing correctly disposed of the taxpayer's contention that it never had the right to receive the securities because of provisions of its articles of incorporation, its agreement with Commerce, or the Investment Advisors Act of 1940. (R. 134–139.) The con-

tention, which is repeated in this Court (Pet. 5–6, Br. 11), is obviously without merit, as is fully demonstrated by the court below (R. 138–139).

In this Court, the taxpayer advances an additional argument that, if the taxpayer did have a right to receive, it effected a transfer of it as to all future purchases at the time of the inception of its operations when it made the arrangements with Commerce, and that therefore any attempted tax must fail because it would be "impossible of computation." (Pet. 4, Br. 10, 13.) This argument is also without merit. While the transfer of the right to receive each lot of securities purchased may have come about pursuant to the standing arrangements originally made, the actual transfer was made at the time of each purchase, when the taxpayer issued its "Officers' Certificate (R. 22), directing Commerce to pay for the securities purchased (R. 138–139), and therefore the tax was computable and was properly computed upon each lot of securities purchased (R. 134–135). In any event, the transfer of a right to receive shares of stock is taxable, whether the grant of the right occurs at the same time or before or after the purchase is made. See Section 1802 (b) of the Internal Revenue Code; *Raybestos-Manhattan Co.* v. *United States, supra; Founders General Co.* v. *Hoey, supra.*

3. The decision below is not in conflict, as petitioner claims (Pet. 5–6, Br. 13–14), with *Corpora-*

tion of America v. *McLaughlin,* 100 F. 2d 72 (C. C. A. 9th), or *Orpheum Bldg. Co.* v. *Anglim,* 127 F. 2d 478 (C. C. A. 9th). Those cases follow the principles laid down in the *Raybestos* and *Founders* decisions, and apply them to the facts there presented, which are different from the facts in this case. Nor is the decision below in conflict with *Birmingham* v. *Central Life Assur. Soc.,* 141 F. 2d 116 (C. C. A. 8th), and *Occidental Life Ins. Co.* v. *Rogan,* 141 F. 2d 1011 (C. C. A. 9th). Those cases involve a tax on the sale or transfer of bonds, which tax, under Section 3481 of the Internal Revenue Code (26 U. S. C. 1946 ed., Sec. 3481), attaches to sales or transfers of legal title or deliveries with intent to pass title, but does not reach transfers of the right to receive, such as are reached by Section 1802 (b) of the Code in the case of shares of stock.

4. On the other phase of the case, the court below correctly held (R. 139–143) that the transfers of the right to receive the shares in question to Commerce were not exempt from tax under the provisions of Section 1802 (b) exempting transfers from an owner to a custodian, because of the absence of the "exemption certificate" required as a condition to the exemption—even though Commerce admittedly (R. 140) could be regarded as a "custodian", who within the terms of the statute held for and subject to the instruc-

tions of the owner. The admitted (R. 140) absence of the exemption certificate is fatal to the claim of exemption, because, as the court below recognized (R. 140), the statute requires a certificate in the case of *all transfers,* including transfers of "rights to receive" as well as the physical transfers of certificates. The Regulations promulgated pursuant to the express authority contained in Section 1802 (b) of the Code, Section 113.35 (f) of Treasury Regulations 71 (Appendix, *infra*), do not, as claimed (Br. 15), limit or restrict the statutory requirement of a certificate to the case of a physical transfer of shares. The court below correctly stated that the Regulations "neither add to nor take anything from" (R. 142) the provisions of the statute; and its opinion contains, we submit, a complete answer to the argument of the taxpayer on this phase of the case.

There is no doubt whatever, either in the statute or in the Regulations, to be resolved in favor of the taxpayer, as claimed. (Pet. 6, Br. 15–16.) Consequently, the decision below is not in conflict with *McFeely* v. *Commissioner,* 296 U. S. 102, and other cases in which it has been said that doubtful taxing statutes should be construed favorably to the taxpayer.

5. Finally, it may be noted that the tax was in any event correctly imposed because of the transfer of the shares in question directly to the

nominee of Commerce, since there were no exemption certificates. In other words, even if it were assumed that the taxpayer did not have the right to receive the shares purchased, and that that right rested in Commerce, and that Commerce made the purchases, as claimed (Pet. 4, 5), the tax was in any event correctly imposed because of the issuance of the shares in the name of the nominee of Commerce, since that would involve a transfer of the right to receive from Commerce to its nominee. Such a transfer from a custodian to its nominee would be exempt under the statute, but that exemption is also granted only upon condition that there be an exemption certificate and, since in this case there were no exemption certificates, the transfer from Commerce to its nominee of the right to receive the shares in question would therefore not qualify for the exemption under the statute.

Similarly, there would, of course, be no right to exemption even if the rights to receive the shares be viewed as having been transferred from the taxpayer directly to the nominee of Commerce. Although the statute does not expressly mention a transfer direct from the owner to a nominee of a custodian, Section 113.35 (f) of the Regulations states that such a transfer will be exempt from tax, but only if there is an exemption certificate—and there was none in this case.

CONCLUSION

The decision below is correct. It turns upon the particular facts of the case and presents no question calling for further review by this Court. There is no conflict of decisions. The petition should, therefore, be denied.

Respectfully submitted.

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NOVEMBER 1948.

APPENDIX

Internal Revenue Code:

CHAPTER 11—DOCUMENTS, OTHER INSTRUMENTS, AND PLAYING CARDS

SUBCHAPTER A—RATE AND PAYMENT OF TAX

SEC. 1800. IMPOSITION OF TAX.

There shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in sections 1801 to 1807, inclusive, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, the several taxes specified in such sections.

(26 U. S. C. 1946 ed., Sec. 1800.)

* * * * *

SEC. 1802.[6] CAPITAL STOCK (AND SIMILAR INTERESTS).

(a) *Original Issue.*—On each original issue, * * * of shares or certificates of stock, * * * on each $100 of par or face value or fraction thereof of the certificates issued by such corporation or by such investment trust or similar organization (or of the shares where no certificates were issued), 10 cents until July 1, 1939, and 5 cents thereafter: * * *

[6] Section 1802 (a) and (b) was subsequently amended with respect to the rates of tax, by Section 521 of the Revenue Act of 1941, c. 412, 55 Stat. 687.

(b) *Sales and Transfers.*—On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subsection (a), or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not), on each $100 of par or face value or fraction thereof of the certificates of such corporation or other organization (or of the shares where no certificates were issued) 4 cents until July 1, 1939, and 2 cents thereafter, and where such shares or certificates are without par or face value, the tax shall be 4 cents until July 1, 1939, and 2 cents thereafter, on the transfer or sale or agreement to sell on each share (corporate share, or investment trust or other organization share as the case may be): *Provided,* That in case the selling price, if any, is $20 or more per share the above rate shall be 5 cents instead of 4 cents until July 1, 1939: *Provided further,* That it is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited nor upon the return of stock loaned: *Provided further,* That the tax shall not be imposed upon deliveries or

transfers to a broker or his registered nominee for sale, nor upon deliveries or transfers by a broker or his registered nominee to a customer for whom and upon whose order the broker has purchased same, nor upon deliveries or transfers by a purchasing broker to his registered nominee if the shares or certificates so delivered or transferred are to be held by such nominee for the same purpose as if held by the broker, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That in case of sale where the evidence of transfer is shown only by the books of the corporation or other organization the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of

the sale, and the matter or thing to which it refers: *Provided further,* That as used in this section the term "registered nominee" shall mean any person registered with the collector in accordance with such rules and regulations as the Commissioner with the approval of the Secretary shall prescribe. The tax shall not be imposed upon deliveries or transfers of shares or certificates.—

(1) From the owner to a custodian if under a written agreement between the parties the shares or certificates are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian.

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

The tax imposed by this subsection shall not be imposed upon any delivery or transfer by an executor or administrator to a legatee, heir, or distributee of shares or certificates of stock if it is shown to the satisfaction of the Commissioner that the value of such shares or certificates is not greater than the amount of the tax that would otherwise be imposed on such delivery or transfer.[7]

(26 U. S. C. 1946 ed., Sec. 1802.)

Treasury Regulations 71 (1941 ed.)

SUBPART D.—SALES AND TRANSFERS OF CAPITAL STOCK AND SIMILAR INTERESTS

SEC. 113.30. SCOPE OF TAX.—Section 1802 (b) imposes a tax on sales, or agreements to sell, or memoranda of sales, of stock; on deliveries of stock with intent to pass title; on transfers of legal title to stock; on transfers of rights to subscribe for stock; and on transfers of rights to receive stock. The tax applies to the specified dealings or transactions in stock, whether made before, after, or without the issuance of a certificate, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, and without regard to whether the holder or transferee of the stock or specified right is entitled in any manner

[7] This paragraph was added to Section 1802 (b) by Section 402 of the Revenue Act of 1939, c. 247, 53 Stat. 862. Section 1802 of the code was also amended by Section 506 of the Revenue Act of 1942, c. 619, 56 Stat. 798, in respects not material here and hence not reflected in this appendix.

to the benefit thereof. The tax accrues at the time of making the sale or agreement to sell or memorandum of sale, or delivery of, or transfer of the legal title to, the stock or specified right, regardless of the time or manner of delivery of the certificate or agreement or memorandum of sale.

SEC. 113.31. DEFINITIONS.—As used hereinafter in this subpart, the term "stock" includes any of the shares or certificates mentioned in section 1802 (a) and rights to subscribe for or to receive such shares or certificates, * * *

* * * * *

SEC. 113.33. SALES AND TRANSFERS SUBJECT TO TAX.—The following transactions in stock, as defined in section 113.31 (unless otherwise exempt), are subject to the tax: All sales, agreements to sell, and transfers with or without benefit to the transferee, whether effected by means of certificates or other instruments or by entries on the books of the issuing corporation or other entity or otherwise. The following are examples of taxable transactions:

* * * * *

(*d*) Transfer to or by trustees. * * *

* * * * *

(*j*) Transfer upon order of the purchaser of stock to another person; transfer of the right to receive a stock dividend already declared; issuance of stock to a person other than the subscriber or one paying the consideration for the issuance; and all other transfers of rights to receive; also all transfers of rights to subscribe for stock.

* * * * *

SEC. 113.35. SPECIFIC EXEMPTIONS PROVIDED IN SECTION 1802 (b).—* * *

* * * * *

(*e*) *Transfers between fiduciaries and their nominees.*—The tax does not apply to deliveries or transfers of stock from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if the stock continues to be held by such nominee for the same purpose for which it would be held if retained by such fiduciary, or from the nominee to such fiduciary. The person making an exempt transfer under this subsection shall, at the time of such transfer, furnish and attach to the certificate a statement setting forth the relevant facts.

(*f*) *Transfers to or by a custodian.*—The tax does not apply to the delivery or transfer of stock from the owner thereof to a custodian, if under a written agreement between the owner and the custodian, the stock so delivered or transferred is to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or to the delivery or transfer of stock from such custodian to such owner.

The tax also does not apply to the delivery or transfer from such custodian to a registered nominee of such custodian, or from the owner direct to such registered nominee, or from one such nominee to another such nominee, if the stock continues to be held by the nominee for the same purpose for which it would be held if retained by such custodian; or from such nominee to such custodian or the owner. No exemption is granted unless the nomi-

nee is registered in the manner provided in section 113.153.

The tax further does not apply to the delivery or transfer of stock from a custodian of the owner to another custodian of the owner, or from the registered nominee of the first custodian to the second custodian or the registered nominee of the latter, if the transfer would have been exempt under the first or second paragraphs of this subsection if made by the owner direct to the second custodian or the registered nominee of the latter.

The exception specified in this subsection shall not be granted in any case unless the delivery or transfer is accompanied by a statement, signed by the custodian, in substantially the following form:

> It is hereby certified that the transfer of the attached shares is exempt from the transfer tax under the provisions of section 1802 (b) of the Internal Revenue Code, and that evidence in proof of the exemption is maintained by us and is available for inspection by internal revenue officers.
>
> ----------,
> (Signature of Custodian)

The custodian contemplated by this subsection is a mere custodian and does not include a trustee. A mere custodian is a person to whom there are delivered or transferred shares or certificates of stock to be held or disposed of by the custodian for, and subject at all times to the instructions of, the owner and not otherwise.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1948

II